



**FREDERICK COUNTY PLANNING COMMISSION**  
**June 13, 2012**

---

**TITLE:** **Linton at Ballenger: Letter of Understanding (LOU) Amendment**

**FILE NUMBER:** **S-1128 (AP# 2121)**

**REQUEST:** **Letter of Understanding (LOU) Amendment**

Requesting a 6<sup>th</sup> amendment to the approved Letter of Understanding, executed March 9, 2005 for the Linton PUD.

**PROJECT INFORMATION:**

**LOCATION:** Located on the north side of Elmer Derr Road, east and west of Ballenger Creek Pike (MD 351).  
**ZONE:** Planned Unit Development (PUD)  
**REGION:** Adamstown  
**WATER/SEWER:** W-3, S-3  
**COMP. PLAN/LAND USE:** Medium Density Residential

**APPLICANT/REPRESENTATIVES:** (as applicable)

**OWNER/APPLICANT:** Linton Green, LLC/Ausherman Homes, Inc.  
**ENGINEER:** N/A  
**ATTORNEY:** Andrew C. DiPasquale

**STAFF:** Ron Burns, Traffic Engineer

**RECOMMENDATION:** Approval

**Enclosures:**

Exhibit #1 – Applicant Request and Proposed Sixth Amendment to APFO LOU  
Exhibit #2 – Original LOU, executed March 9, 2005

## **STAFF REPORT**

### **BACKGROUND**

The Ausherman Development Corporation filed an application to rezone the Linton Property, which consists of 138.7 acres, from Agriculture classification to the Planned Unit Development (PUD) classification to permit the development of a mixed-use residential community containing a maximum of 763 dwelling units. On March 11, 2004, the Applicant received approval from the Board of County Commissioners (BOCC) for the rezoning request with twenty-six (26) conditions. The Phase II Plan for the development was conditionally approved at the October 20, 2004 Planning Commission meeting. The site is located within the Adamstown Planning Region, with a comprehensive plan designation of Medium Density Residential.

The original letter of understanding (LOU) was executed on May 5, 2005 and was to be in effect for 10 years beyond the original planning commission approval date of October 20, 2004. With two recent extensions, it is now set to expire on October 20, 2020. Since the original LOU was approved there have been five subsequent amendments:

1. October 18, 2006 – involving the schools section
2. December 13, 2007 – modifying the limits of the Elmer Derr Rd. improvement (first bullet on page 3)
3. June 10, 2010 (executed) – modifying limits of the MD 351/Elmer Derr Rd intersection improvement (third bullet on page 3)
4. September 8, 2010 – involving the annual dwelling unit recordation cap
5. June 8, 2011 – detailing the timing of road completion requirements relating to building permit issuance

### **ANALYSIS**

The primary purpose of this Sixth Amendment to the Linton PUD LOU, as originally proposed by the Applicant, was to amend the specific timing conditions attached to the construction and completion of certain roadway improvements, as detailed in the original LOU and further detailed and amended in the 5<sup>th</sup> Amendment. By reason of the necessary fabrication and installation of a box culvert (an atypically long-lead item), there was reasonable concern regarding the Applicant's ability to complete construction of specific roadway improvements within the 120 day window specified in the existing LOU and amendment. This time window between building permit and certificate of occupancy would increase to 240 days only for Land Bay 'B' in order permit a reasonable construction period, but with the added surety to prohibit any future building permit issuance should unanticipated construction delays add to the MD 351 detour duration.

In reviewing the timing and sequencing of the PUD's roadway improvements, Staff requested that the Applicant consider entertaining additional amendments and/or supplements to the existing LOU, in order to address recent changes to the immediate neighborhood with the Phase II approval of the Wedgewood West MXD and Younkens PUD.



Specifically, this proposed Sixth Amendment to the Linton PUD LOU serves to:

1. extend the requisite timing associated with the completion of roadway improvements within Land Bay "B" (LOU point 2);
2. implement timing controls for the road closures associated with improvements to MD 351 (LOU point 3);
3. specify the timing of the required dedication of certain right of way necessary for Elmer Derr Road/English Muffin Way (LOU point 4); and
4. accelerate the timing of the guaranty required in connection with the installation of Street "A" (LOU point 5).

These amendments will help facilitate the extension of English Muffin Way from New Design Road to MD 351 by advancing road dedication requirements, and will accelerate the Linton/Younkins residential neighborhood interconnectivity by advancing the timing for the construction of the future Alan Linton Drive.

As with all earlier amendments, the termination date for APFO approval will remain unchanged. Staff understands this Sixth Amendment is necessary to the Applicant in order to promote continued positive progress within the Linton PUD project and believes it would not create an unreasonable impact to the public. Moreover, this proposal serves as an example of cooperation between the Applicant and Staff working toward mutually beneficial needs, and as a result will promote the public interest.

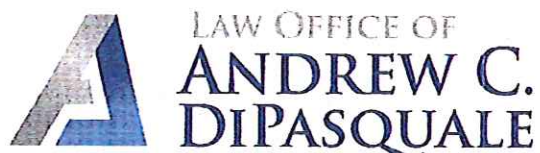
#### **FINDINGS**

The Staff finds that the proposed language contained in the Sixth Amendment is reasonable and justified and would result in mutual benefits to the Applicant and public.

#### **RECOMMENDATION**

Staff recommends approval of the Sixth Amendment of the LOU, subject to no additional conditions.





May 24, 2012

**VIA EMAIL AND HAND-DELIVERY**

Frederick County Planning Commission  
c/o Kathy Mitchell, Esquire, Assistant County Attorney  
Ron Burns, P.E., Traffic Engineer  
Frederick County Community Development Division  
30 N. Market Street  
Frederick, Maryland 21701

**Re: Proposed Sixth Amendment to APFO Letter of Understanding for Linton PUD**

Dear Kathy and Ron:

Enclosed please find three (3) originals of an Application for FcPc Modification Request, three (3) originals of a proposed Amendment to the Adequate Public Facilities Ordinance (APFO) Letter of Understanding (LOU), and a check in the amount of \$385.00 for the filing fee.

By way of a follow up to our meetings and discussions with Staff of several months ago, the primary purpose of the amendment to the Linton PUD LOU, as originally proposed, was to amend the specific timing conditions attached to the construction and completion of certain roadway improvements, for cause. As presented in our initial meeting with Staff, by reason of the necessary fabrication and installation of a box culvert (an atypically long-lead item), there was reasonable concern regarding the Developer's ability to complete construction of specific roadway improvements within the (120) day window specified in the existing LOU.

In reviewing the timing and sequencing of the PUD's roadway improvements, Staff requested that the Developer consider entertaining additional amendments and/or supplements to the existing LOU. As a result of cooperative efforts with Staff, the original request of the Developer was supplemented. Specifically (as cooperatively amended), this proposed Sixth Amendment to the Linton PUD LOU serves to (i) extend the requisite timing associated with the completion of roadway improvements within Land Bay "B"; (ii) accelerate the timing of the guaranty required in connection with the installation of Street "A"; (iii) implement timing controls for the road closures associated with improvements to MD 351; and (iv) specify the timing of the required dedication of certain right of way necessary for Elmer Derr Road/English Muffin Way.

As with all earlier amendments, the termination date for APFO approval will remain unchanged. We believe this Sixth Amendment to be reasonable, and, in fact, necessary to promote continued positive progress within the Linton PUD project. Moreover, the final form of this proposal serves

Kathy Mitchell, Esquire, Assistant County Attorney  
Ron Burns, P.E., Traffic Engineer  
May 24, 2012  
Page 2

as an example of mutually beneficial cooperation as between the Developer and Staff, and will promote the public interest.

Many thanks for your consideration and assistance with regard to this requested amendment. Please let me know if there is any other information I can provide in connection with this application.

Sincerely,

A handwritten signature in cursive script, reading "Andrew C. DiPasquale".

Andrew C. DiPasquale, Esq.

Enclosures

cc (via email): Mr. David Bennion  
Mr. Mike Etchemendy  
Mr. Bill Yauss



**SIXTH AMENDMENT TO**  
**ADEQUATE PUBLIC FACILITIES LETTER OF UNDERSTANDING**  
**LINTON PUD**

This Sixth Amendment ("Sixth Amendment") to Adequate Public Facilities Letter of Understanding, Linton PUD, dated March 9, 2005, between the Frederick County Planning Commission ("Commission") and Ausherman Development Corporation ("Developer"), (referred to herein as "Letter"), is made this \_\_\_\_ day of June, 2012, by and between the Commission and Ausherman Homes, Inc. and Linton Green, LLC (Ausherman Homes, Inc. and Linton Green, LLC, as successors in interest to Developer).

Explanatory Note: This Sixth Amendment is made for the purpose of further clarifying and amending certain prerequisites to the issuance of residential building permits in a given development phase or stage, and to otherwise supplement the terms relating to the Developer's construction of certain roadway improvements within the Linton PUD project. Specifically, this Sixth Amendment serves to extend the requisite timing associated with the completion of roadway improvements within Land Bay "B"; accelerate the timing of the guaranty required in connection with the installation of Street "A"; implement timing controls for the road closures associated with improvements to MD 351; and specify the timing of the required dedication of certain right of way.

The Letter is hereby amended as follows:

1. The Explanatory Note set forth above is incorporated into the Letter as if fully restated herein.
2. The following language is hereby added to the end of the provision set forth in the first bullet point (•) of Paragraph 2 on page 1 of the Letter, entitled "Roads":

“..., except in the case of Land Bay “B”, where it is agreed that the improvement(s) shall be open to traffic within (240) days of the date of the issuance of the 1<sup>st</sup> building permit within Land Bay “B”.”
3. The following bullet point (•) is hereby added as a new eleventh bullet point under the heading "Road Improvements" on page 3 of the Letter:
  - The closing of MD 351 to construct roadway improvements shall be kept to a minimum. If the section of MD 351, north of Alan Linton Drive, is closed to traffic for more than a total of (28) days or the section south of Alan Linton Drive is closed for more than (180) days, no additional building permits shall be issued for Land Bays “B”, “C” or “D” until such time as the entirety of MD 351 subject to Developer improvements is reopened to traffic.
4. The following bullet point (•) is hereby added as a new twelfth bullet point under the heading "Road Improvements" on page 3 of the Letter:
  - Developer shall dedicate all land within the PUD necessary for right of way for Elmer Derr Road Road/English Muffin Way, consistent with the

approved Linton Land Bay D Preliminary Plan alignment of English Muffin Way, either at the recordation of the 1<sup>st</sup> lot in Land Bay "D" or when required of others to facilitate the construction of English Muffin Way Extended, whichever comes first.

5. The sixth bullet point (•) under the heading "Road Improvements" on page 3 of the Letter is hereby deleted in its entirety and replaced with the following:

- Installation of Street "A" – Phase 2, shown in fuchsia on the Linton Property Phase II Development Phasing Plan (Exhibit 2), shall be guaranteed prior to the recordation of the 1<sup>st</sup> residential lot in Land Bay "C" and completed within 12 months.

Except as herein modified, the Letter shall remain unchanged and in full force and effect.

AUSHERMAN HOMES, INC.

By: \_\_\_\_\_ (SEAL)

Name/Title:

\_\_\_\_\_ Date

LINTON GREEN, LLC

By: \_\_\_\_\_ (SEAL)

Name/Title:

\_\_\_\_\_ Date

FREDERICK COUNTY PLANNING COMMISSION

BY : \_\_\_\_\_ (SEAL)

John McClurkin, Chair or Robert Lawrence, Secretary

\_\_\_\_\_ Date

ATTEST:

BY: \_\_\_\_\_

Gary Hessong, Director, Permits and Inspections

\_\_\_\_\_ Date

*Planner's Initials / Date* \_\_\_\_\_

*County Attorney's Office Initials / Date* \_\_\_\_\_

*(Approved as to legal form)*



**FIFTH AMENDMENT TO**  
**ADEQUATE PUBLIC FACILITIES LETTER OF UNDERSTANDING**  
**LINTON PUD**

This Fifth Amendment ("Fifth Amendment") to Adequate Public Facilities Letter of Understanding, Linton PUD, dated March 9, 2005, between the Frederick County Planning Commission ("Commission") and Ausherman Development Corporation ("Developer"), (referred to herein as "Letter"), is made this 8<sup>th</sup> day of June, 2011, by and between the Commission and Ausherman Homes, Inc. and Linton Green, LLC (Ausherman Homes, Inc. and Linton Green, LLC, as successors in interest to Developer).

Explanatory Note: This Fifth Amendment is made for the purpose of clarifying and amending certain prerequisites for the issuance of residential building permits in a given development phase or stage. Specifically, this Fifth Amendment facilitates the overlapping of permit issuance and housing construction starts with completion of the road improvement(s) in order to facilitate the commencement of housing construction where a required upgrade, modification or improvement to an existing road is within (120) days of being open to traffic.

The Letter is hereby amended as follows:

1. The Explanatory Note set forth above is incorporated into the Letter as if fully restated herein.

2. Paragraph 2 on page 1 of the Letter is hereby deleted in its entirety and replaced with the following language:

2. Permit Issuance:

- Roads: Prior to issuance of any building permit for the residential construction in a given development phase or stage, the required roadway improvements(s) for that stage shall be guaranteed for construction, and the improvements(s) shall be open to traffic within (120) days of the date of issuance of the 1<sup>st</sup> building permit within such phase or stage of development.

- Water and Sewer: Prior to issuance of any building permit for the residential construction in a given development phase or stage, construction of the required water and sewer improvements shall be completed to the extent that the improvements are conditionally accepted by DPW and deemed operational by the Division of Utilities and Solid Waste Management (DUSWM).

Fifth Amendment to Adequate Public Facilities  
Letter of Understanding  
Ausherman Homes, Inc. / Linton Green, LLC  
Page 2

Except as herein modified, the Letter shall remain unchanged and in full force and effect.

AUSHERMAN HOMES, INC.

By: See next page (SEAL)  
Name/Title:

\_\_\_\_\_  
Date

LINTON GREEN, LLC

By: [Signature] (SEAL)  
Name/Title: J. DUSZYNSKI / SQ. V.P.

6/7/11  
Date

FREDERICK COUNTY PLANNING COMMISSION

By: [Signature] (SEAL)  
Chair

6/8/2011  
Date

ATTEST:

[Signature]  
Gary Hessong, Director

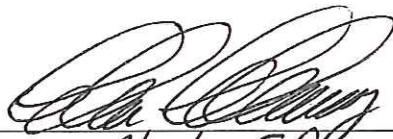
6-8-11.  
Date

Kem  
6/8/11

Fifth Amendment to Adequate Public Facilities  
Letter of Understanding  
Ausherman Homes, Inc. / Linton Green, LLC  
Page 2

Except as herein modified, the Letter shall remain unchanged and in full force and effect.

AUSHERMAN HOMES, INC.

By:  (SEAL)  
Name/Title: Charles F. Chusen  
Vice President.

\_\_\_\_\_  
Date

LINTON GREEN, LLC

By: See previous page (SEAL)  
Name/Title: \_\_\_\_\_

\_\_\_\_\_  
Date

FREDERICK COUNTY PLANNING COMMISSION

By: See previous page (SEAL)  
Chair

\_\_\_\_\_  
Date

ATTEST:

  
\_\_\_\_\_  
Gary Hessong, Director

6-8-11.  
\_\_\_\_\_  
Date

KXM  
6/8/11







## DIVISION OF PERMITTING AND DEVELOPMENT REVIEW FREDERICK COUNTY, MARYLAND

*Department of Development Review*

Winchester Hall • 12 East Church Street • Frederick, Maryland 21701  
www.co.frederick.md.us

### ADEQUATE PUBLIC FACILITIES LETTER OF UNDERSTANDING

#### LINTON PUD

#### COMMISSIONERS

John L. Thompson, Jr.  
*President*

Michael L. Cady  
*Vice President*

John R. Lovell, Jr.

Jan H. Gardner

Bruce L. Reeder

#### COUNTY MANAGER

Douglas D. Browning

#### DIVISION OF PERMITTING AND DEVELOPMENT REVIEW

Gary W. Hessong  
*Division Director*

#### DEPARTMENT OF DEVELOPMENT REVIEW

Elisabeth S. Smith, P.E.  
*Chief, Engineering*

The following Letter of Understanding (Letter) between the Frederick County Planning Commission ("Commission") and Ausherman Development Corporation, ("Developer") or assigns, sets forth the conditions and terms which the Commission deems to be the minimum necessary improvements, including but not limited to, roads, schools, water and sewer, that must be in place (or guaranteed as set forth below) for the property known as the Linton Property PUD ("the PUD") to be developed, in compliance with Section 1-20-9 of the Adequate Public Facilities Ordinance, as adopted on October 15, 1991 as amended ("APFO"), and the approved Phase II Development Plan for the PUD. These improvements and the timetable for completion of the improvements are in response to a Developer's Option Letter submitted to the Commission dated September 22, 2004. The Developer hereby agrees and understands that unless the terms and conditions discussed herein are complied with, in accordance with the Development Phasing Schedule prescribed by this Letter, development will not be permitted to proceed.

This Letter concerns the Linton Farm, a 138.7 acre parcel of land which is zoned Planned Unit Development (PUD), located on the East and West side of Ballenger Creek Pike and North of the intersection with Elmer Derr Road and designated as Linton Property Phase II PUD ("**Phase II PUD**") on the Phase II Plans entitled, "Linton Property Phase II Land Use Plan" (Exhibit 1), "Linton Property Phase II Development Phasing Plan" (Exhibit 2), "Linton Property Phase II Water and Sewer Facilities Plan" (Exhibit 3), and the "Linton Property Phase II Green Space and Amenities Plan" (Exhibit 4). The APFO approval discussed herein will be effective for a period of ten (10) years from October 20, 2004 for the Linton Property shown on the Phase II PUD Plans, which were conditionally approved by the Commission on October 20, 2004 for up to 763 residential dwelling units as shown on the Phase II Plan ("**Project**").

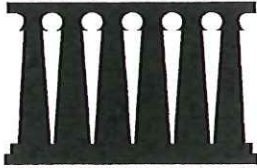
#### Triggering Mechanisms

The Developer agrees to the following requirements and prerequisites to the identified "development approvals".

1. Record Plat: Prior to the recording of final residential subdivision lots, the Developer shall guarantee, pursuant to County procedures, all infrastructure improvements required under this Letter for the given development phase or stage in which the lots are recorded.
2. Permit Issuance: Prior to the issuance of building permits for the residential construction in a given development phase or stage, the improvements required for that stage as required under this letter shall be "available for service". The phrase "available for service" shall mean: *(see 5th Amendment)*

- Roads: Construction completed to the extent that the required roadway improvement is open to traffic. Subject to the approval of the Frederick

#### **CHARACTER COUNTS!**



JOSEPHSON INSTITUTE OF ETHICS<sup>SM</sup>  
WORTHINESS • RESPECT  
POSSIBILITY • FAIRNESS  
CARING • CITIZENSHIP



County Division of Public Works (DPW) and/or State Highway Administration (SHA), a required road improvement may be deemed operational and open to traffic prior to the final completion and acceptance for maintenance.

- Water and Sewer: Construction completed to the extent that the required water and sewer improvements are conditionally accepted by DPW and deemed operational by the Division of Utilities and Solid Waste Management (DUSWM).

While the public water and sewer facilities proposed to serve the Project will be adequate for this development, the Developer is aware that capacity is not guaranteed until purchased. APFO approval for water and sewer does not guarantee that plats will be recorded and building permits issued. Plat recordation and building permit issuance is subject to compliance with the Annotated Code of Maryland, Environment Article Section 9-512, et seq. and all applicable County regulations, including but not limited to Sec. 1-16-106 (of Subdivision Regulations). Plats cannot be recorded until water and sewer improvements to the property line are available within (90) days of completion.

### **Water Improvements**

The proposed water system to serve the Project will consist of a network of public water mains and private service connections, as shown on the Developer's Phase II PUD Water & Sewer Facilities Plan (Exhibit 3), and as such shall be approved by DUSWM. These proposed mains and service laterals will connect to an existing 16-inch water main located south of the intersection of Ballenger Creek Pike at Lambert Drive, approximately 100 feet north of the Project.

The Developer shall construct a 16-inch water trunk line loop extension from the existing 16-inch main, south along Ballenger Creek Pike to Elmer Derr Road. From that 16-inch trunk line extension, the Developer will construct a 16-inch loop water line, east through the Project along "Street A", and a parallel 16-inch loop water extension east along Elmer Derr Road, both as schematically delineated on the Phase II PUD Water and Sewer Facilities Plan. The timing of these trunk waterline extensions shall be phased with the construction of adjacent infrastructure within the Project.

### **Sewer Improvements**

Sanitary Sewer Lines shall be connected to an existing 24-inch public sewer line located along Ballenger Creek to the north of the Project, as shown on the Phase II PUD Water and Sewer Facilities Plan (Exhibit 3). In order to adequately serve the Project, the Developer will extend that 24-inch sewer line approximately 750 feet to the west along the northern side of Ballenger Creek, from which a 12-inch sewer line will be extended approximately 900 feet to the internal street/sewer service laterals within the Project.

### **Schools**

Pursuant to Section 1-20-11 of the APFO, the Developer shall provide all funding necessary to design, build and equip an addition to Tuscarora High School (THS) in order to increase its student capacity to approximately 1600 students. An addition to THS is recommended in the approved Board of Education "Educational Facilities Master Plan." The specific financing arrangements and means and methods of design and construction shall be incorporated into a separate agreement between the Developer and the Board of Education. The Board of Education shall have final authority in connection with this separate agreement. No residential lots within the Project may be recorded until the addition to THS is under construction. If the THS addition is not under construction by July 1, 2009, Phase II approval shall be null and void and no residential lots in the Project shall be recorded.

### **Phasing of Improvements**

The Developer shall submit quarterly progress reports to the Department of Development Review indicating the number of permits issued for each land bay as noted on the Linton Property Phase II Development Phasing Plan



(Exhibit 2), in order to allow the Department to monitor the issuance of building permits in accordance with this Letter.

### Road Improvements

The Developer shall construct the following Roadway Improvements in accordance with the findings and conclusions of the Traffic Impact Study for the Project as proposed by Wells and Associates, LLC, dated June 8, 2004 and revised August 9, 2004. The Developer shall provide improvements to the S-Curve in accordance with the July 27, 2004 memo from Robert Shen, attached as Exhibit #5 and incorporated herein by reference, and in compliance with the rezoning conditions adopted under FCBOCC Ordinance Number 04-03-347. The Developer shall provide all on site and off site improvements as agreed upon between Maryland State Highway Administration (MSHA) and the Developer in accordance with the letters, attached hereto and incorporated herein by reference, dated July 23, 2004 (Exhibit #6), August 5, 2004 (Exhibit #7) and August 30, 2004 (Exhibit #8), and subject to County approval.

- 1 • Improvements to Elmer Derr Road west of Ballenger Creek Pike (frontage and entrance improvements to Frederick County Minor Arterial Standards per rezoning condition #6), shown in red on the Linton Property Phase II Development Phasing Plan (Exhibit 2) and improvements to the Elmer Derr Road "S-curve" west of the Project, shall be guaranteed prior to the recordation of the 1st residential lot in Land Bay "A" and completed within 12 months. *(see Amendment language)*
- 2 • Installation of Street "C" (subject to regulatory approvals), shown as a gray dashed line on the Linton Property Phase II Development Phasing Plan (Exhibit 2), shall be guaranteed prior to the recordation of the 151st residential lot in Land Bay "A" per August Planning Commission comments.
- 3 • Intersection improvements at Ballenger Creek Pike/Elmer Derr Road (improvements to the intersection shall be agreed upon between the Developer, MSHA and Frederick County Traffic Engineering), shown in orange on the Linton Property Phase II Development Phasing Plan (Exhibit 2), shall be completed within 36 months after the recordation of the 1st residential lot in the Project. *(see Amendment language)*
- 4 • Improvements to Ballenger Creek Pike from northern property line to the area south of Street "A" and as required in order to get an access permit from MSHA, shown in yellow on the Linton Property Phase II Development Phasing Plan (Exhibit 2), shall be guaranteed prior to the recordation of the 1st residential lot in Land Bay "B" and completed within 12 months.
- 5 • Installation of Street "A" - Phase 1, shown in green on the Linton Property Phase II Development Phasing Plan (Exhibit 2), shall be guaranteed prior to the recordation of the 1st residential lot in Land Bay "B" and completed with 12 months.
- 6 • Installation of Street "A" - Phase 2, shown in fuchsia on the Linton Property Phase II Development Phasing Plan (Exhibit 2), shall be guaranteed prior to the recordation of the 151st. residential lot in Land Bay "C" and completed within 12 months.
- 7 • Improvements to Ballenger Creek Pike south of Street "A", shown in purple on the Linton Property Phase II Development Phasing Plan (Exhibit 2), shall be guaranteed prior to the recordation of the 1st residential lot in Land Bay "D" and completed within 12 months.
- 8 • Improvements to Elmer Derr Road east of Ballenger Creek Pike (frontage and entrance improvements to Frederick County Major Arterial Standards per rezoning condition #6 and approved by Frederick County Traffic Engineering), shown in blue on the Linton Property Phase II Development Phasing Plan (Exhibit 2), shall be guaranteed prior to the recordation of the 1st residential lot in Land Bay "D" and completed in 12 months.
- 9 • Conduct analysis of Traffic Signalization at Ballenger Creek Pike and Lambert Drive subsequent to the opening of the new elementary school on Lambert Drive (subject to MSHA Signal Warrant approval)-timing of signal installation (if warranted), by the Developer, to be determined by MSHA
- 10 • Improvement of the intersection of Ballenger Creek at Corporate Drive (scope of improvements to be agreed upon between Developer and MSHA consistent with the Traffic Impact Study prior to the recordation of the 600<sup>th</sup> residential building lot within the Project and completed within 12 months. *(see 4th amendment)*



The scope of all roadway installations and improvements shall be agreed upon by MSHA and DPW, and consistent with Traffic Study and Street and Roads Design Manual.

### **Phasing of the Amenities:**

The Developer agrees to the following phasing plan as delineated on the Linton Property Phase II Development Phasing Plan (Exhibit 2). Developer also agrees that, if the order of land bay development changes, it may change the phasing of the amenities, and require the submittal and re-approval of the phasing plan.

- The Neighborhood Park will be opened by date of issuance of the final building permit (164<sup>th</sup>) for Land Bay "A".
- The Community Center for the entire development will be opened by the date of issuance of the 400<sup>th</sup> Building permit for the Project.
- Tot lot 1 shall be open by the date of issuance of the 130<sup>th</sup> building permit for Land Bay "B." This will likely equate to 50% Occupancy.
- Tot lot 2 shall be open by the date of issuance of the 270<sup>th</sup> permit for Land Bay "C," and Tot lot 3 shall be open by the date of issuance of the 50<sup>th</sup> permit for Land Bay "D." This will likely equate to 75% of the building permit issuance for these land bays.
- Multi-Use Trail: Part 1, shown as a dotted red line on the Linton Property Phase II Development Phasing Plan (Exhibit 2), shall be completed prior to the date of issuance of the final building permit (164<sup>th</sup>) for Land Bay "A".
- Multi-Use Trail: Part 2A, shown as a dotted orange line on the Linton Property Phase II Development Phasing Plan (Exhibit 2), shall be completed prior to the date of issuance of the 400<sup>th</sup> building permit for the Project.
- Multi-Use Trail: Part 2B, shown as a yellow dotted line on the Linton Property Phase II Development Phasing Plan (Exhibit 2), shall be completed prior to the date of issuance of the 1<sup>st</sup> building permit for Land Bay "D".
- School/ Park Site dedication shall occur prior to the date of issuance of the final building permit (174<sup>th</sup>) for Land Bay "B". The developer shall grade and seed the School/Park Site to standards as set forth on a Grading Plan, consistent with what is required for a finished community recreation field, to be prepared by the developer and approved by the Division of Permitting and Development Review, with advice from the FCPS/Board of Education, such approval not to be unreasonably withheld. Building permits may continue to be issued beyond the 174 permit limit referenced above even if the FCPS/Board of Education is not prepared to accept dedication of the School Site at such time, provided that the School/Park Site has been graded and seeded in accordance with the approved Grading Plan.
- Public Use Site Dedication will occur prior to the date of issuance of the 1<sup>st</sup> building permit in Land Bay "D" or 18 months from the date that the County gives written notice of its desire to have the site conveyed to the County.
- Final plat recordation shall be restricted to no more than 150 dwelling units per calendar year.

. Nothing herein shall be deemed to confer any rights or benefits upon any third party, nor shall anything herein be deemed to require the Developer to construct or otherwise provide any infrastructure items set forth herein except as a condition to the development of the PUD.

The APFO approval shall be for a period of ten (10) years from the date of the Planning Commission approval, (October 20, 2014), subject to any exceptions in this Letter or under current law.

In the event of any inconsistency between this Letter and any exhibits or attachments, the terms and conditions of this Letter shall govern.

AUSHERMAN DEVELOPMENT CORPORATION

By: 

Name:

Title: PRESIDENT

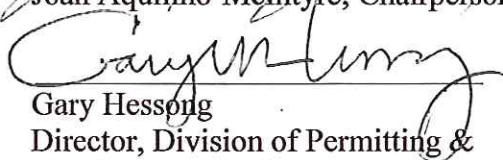
Attest: 

Date: 2-25-05

FREDERICK COUNTY PLANNING COMMISSION

By: 

Joan Aquilino-McIntyre; Chairperson

  
Gary Hessong  
Director, Division of Permitting &  
Development Review

Date: 3/9/05

Date: 3-9-05

KLM  
2-23-05  
JFA  
3/2/05





1. No final submittal record plans for residential building lots shall be recorded until the Tazewell High School addition is under construction.
2. In accordance with recording condition number 26 (Ordinance # 04-03-347, March 11, 2004), during the construction phase of this project, no more than a maximum of 130 residential lots may be recorded annually for this project.

Last Recurrence Sequence		Year 1	Year 2	Year 3	Year 4	Year 5	Year 6
Local Day	XX	X					
Local Day	XX		X				
Local Day	XX			X			
Local Day	XX				X		
Local Day	XX					X	
Local Day	XX						X

[illegible]

	<b>Majors Building Park</b> (Open prior to building permit issuance for Land Day A)
	<b>Cannery by Cowie</b> (Open for 6000 building permits)
	<b>The Loft #1</b> (Open prior to issuance of F750K building permits in Land Day D)
	<b>The Loft #2</b> (Open prior to issuance of F750K building permits in Land Day D)
	<b>The Loft #3</b> (Open prior to issuance of F750K building permits in Land Day D)
	<b>Multi-Use The Convention Center Part 1</b> (prior to first building permit in Land Day A)
	<b>Industrial District</b> (prior to 8000 building permits)
	<b>Multi-Use The Convention Center Part 2B</b> (prior to 1st building permit in Land Day D)
	<b>Reliant Field Site Dedication</b> (prior to final building permits issuance in Land Day D)
	<b>Public Life Site Dedication</b> (prior to final building permits in Land Day D OR 18 months after Reliant Field Site Dedication)

In order to monitor the issuance of building permits, the developer shall submit progress report quarterly to the Department of Development. Further, following the issuance of building permits issued for each local area.

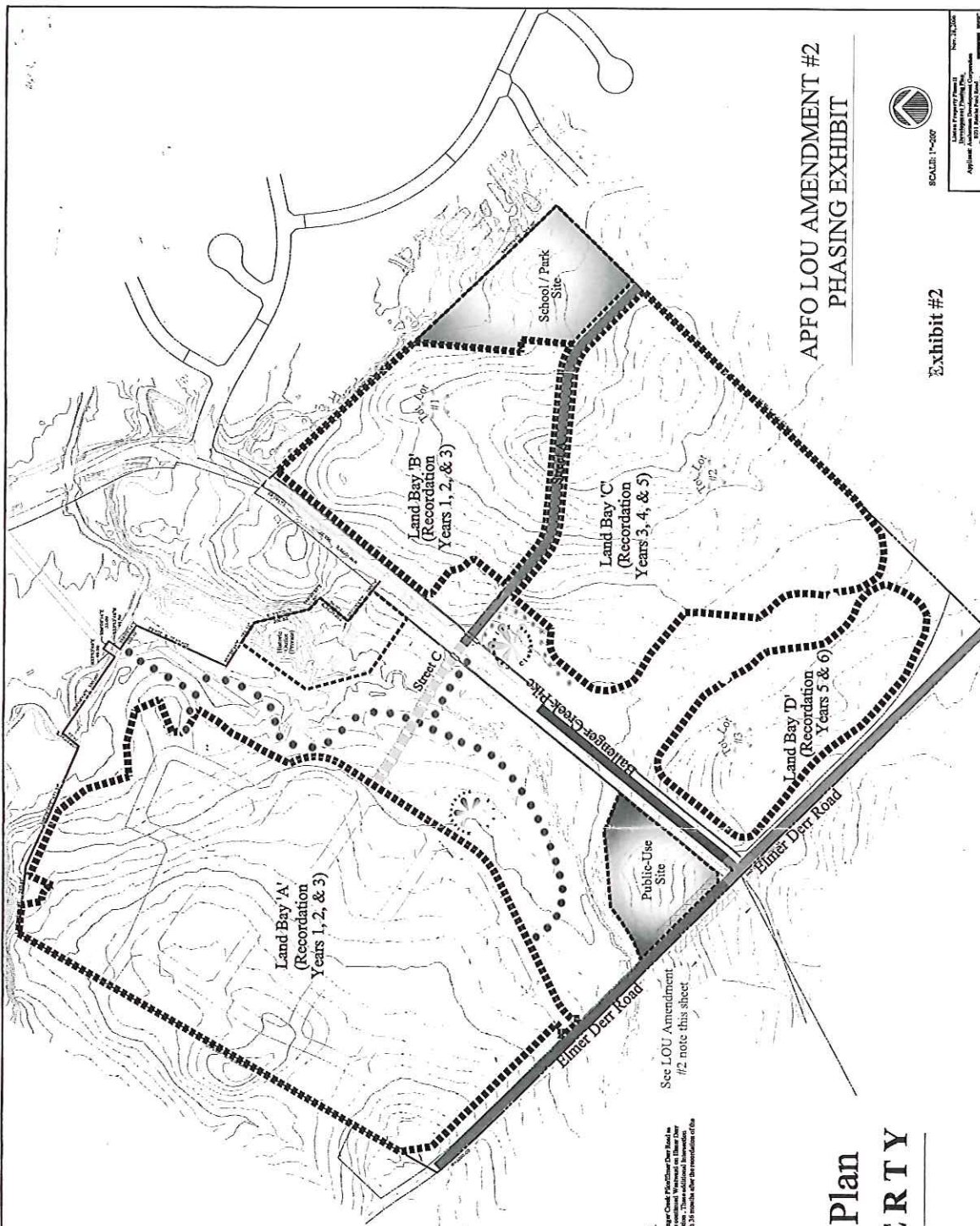
APFO LOU AMENDMENT #2  
PHASING EXHIBIT

**Exhibit #2**



RECAP: 12-2000

Lucas Property Phase II  
 Development Planning Phase  
 Applicant: Aachen Development Corporation  
 8201 Sunset Park Road  
 Philadelphia, Maryland 21114



LOU Amendment #2 Note

1. Intersection Improvements at Hollinger Creek Pike/Elmer Dyer Road as shown in Orange on this sheet shall be continued Westward on Elmer Dyer Road 225' to 275' West of the Intersection. These additional Intersection Improvements shall be completed with 26 months after the recoordination of the Residential Lot in the Project.





1. No final subdivision record plans for residential building lots shall be recorded until the Tuscarora High School addition is under construction.
2. In accordance with recording condition number 26 (Ordinance # 04-03-3, March 11, 2004), during the construction phases of this project, no more than a maximum of 150 residential lots may be recorded annually for this project.

Lot Reclamation Sequence						
	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6
Canal Bay A	X	X				
Canal Bay B	X	X				
Canal Bay C			X	X		
Canal Bay D					X	X

[illegible]

Neighborhood Park  
(Open by final building permit issuance for Land Day A)


Community Center  
(Open by 100th building permit)

[illegible]

**The Lot # 2**  
(Open refers to issuance of 750,000 bullfinch permits in Lot # 2)


**Test Let #3**  
(Chapters 1-10) (100 minutes) (100 points)

























(Upon prior to submission) / State building permit in Land Use D)  
 Multi-Use Trail Construction: Part 1  
 (Prior to final building permit in Land Use A)

Multi-Use Trail Construction: Part 2A  
(Prior to 400th building permit)

Multi-Use Trail Construction: Part 2B  
(Prior to 1st building permit to 1,000,000 sq. ft.)

**School / Park Site Dedication**  
(Prior to final building permit issuance in Land Use 2)



**Public Use Site Dedication**  
(Prior to 1st building permit to Land Use "D" OR 18 months from the date of acquisition)

in order to monitor the issuance of building permits, the developer shall submit

program reports quarterly to the Department of Development Review indicating the number of building permits issued for each land use.

## Phase

## Development

Development

# INTON

Frederick

## References

---

---

APFO LOU AMENDMENT #2  
PHASING EXHIBIT

Exhibit #2



1000-7161/04/1404-0000\$15.00/0

License Property Phase II  
 Development Pending Plan  
 Applicant: Audubon Development Corporation  
 2031 Rutins Pond Road  
 Frederick, Maryland, 21704

Nov. 24, 2000

[illegible]

### YOUTH Amendment #3 Notes

1. Intersection improvements at Hallsiger Creek/Pinegar Drive Road as shown in Orange on this sheet shall be submitted. We're not on these Deer Road 325 to 375 West of the Interchange. These additional Intersection Improvements shall be completed with 30 months after the coordination of the final design. Not identified for the Project.

